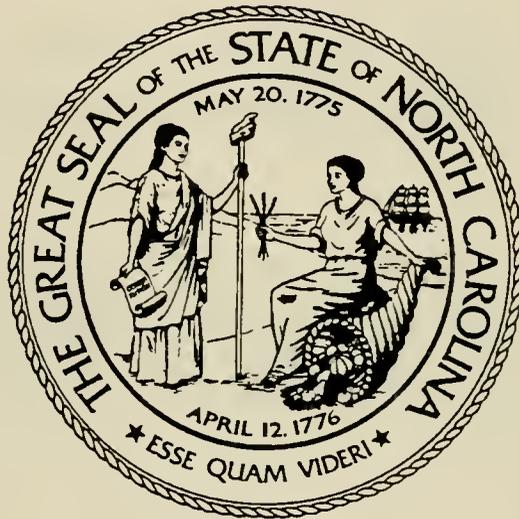


HAZARDOUS WASTE MANAGMENT
STUDY COMMISSION



REPORT TO THE
1989 GENERAL ASSEMBLY
OF NORTH CAROLINA
11 JANUARY 1989

A LIMITED NUMBER OF COPIES OF THIS REPORT ARE
AVAILABLE FOR DISTRIBUTION THROUGH THE
LEGISLATIVE LIBRARY.

ROOMS 2126, 2226
STATE LEGISLATIVE BUILDING
JONES STREET
RALEIGH, NORTH CAROLINA 27611
(919) 733-7778

OR

ROOM 500
LEGISLATIVE OFFICE BUILDING
300 NORTH SALISBURY STREET
RALEIGH, NORTH CAROLINA 27611
(919) 733-9390



NORTH CAROLINA GENERAL ASSEMBLY

HAZARDOUS WASTE MANAGEMENT STUDY COMMISSION

11 January 1989

TO THE MEMBERS OF THE 1989 GENERAL ASSEMBLY:

Pursuant to the requirements of Part II of Chapter 1100 of the 1987 Session Laws (1988 Regular Session), the Hazardous Waste Management Study Commission herewith reports to the 1989 General Assembly.)

Respectfully submitted,

Handwritten signature of Charles W. Hipps.

Senator Charles W. Hipps
Senate Cochairman

Handwritten signature of Joe Hackney.

Representative Joe Hackney
House Cochairman

Table of Contents

Introduction 1

Proceedings of the Commission 3

Findings and Recommendations 5

Appendices

 A. Members and Staff of the Commission 7

 B. General Statute §§ 143B-470 to 470.6 9

 C. 1987 Session Laws (1988 Regular Session)
 Chapter 993, §§ 29 to 34 19

 D. 1987 Session Laws (1988 Regular Session)
 Chapter 1100, Part II 21

 E. Proposed Legislation: A BILL TO BE ENTITLED
 AN ACT TO EXTEND THE HAZARDOUS WASTE
 MANAGEMENT STUDY COMMISSION 23

INTRODUCTION

The problems associated with hazardous waste have been of concern to the General Assembly since at least 1977, when the Solid Waste Management Act was amended to provide for the management of hazardous waste. Every session of the General Assembly since that time has considered and enacted major legislation to address this topic. The 1983 General Assembly created the "Hazardous Waste Study Commission of 1983" and directed it to study alternatives to the landfilling of hazardous wastes. (1983 Session Laws, Ch. 926, Senate Bill 701) After seven meetings, the Study Commission produced an extensive report to the 1984 Regular Session of the General Assembly which included a number of major recommendations. The centerpiece of these recommendations was the creation of the Hazardous Waste Treatment Commission. The Hazardous Waste Treatment Commission was to provide for siting, construction, and operation of a comprehensive hazardous waste management facility. The 1984 General Assembly responded to the Study Commission's recommendations by enacting 1983 Session Laws, Ch. 973 (Senate Bill 734), which created the Hazardous Waste Treatment Commission (G. S. 143B-470 et seq.).

In the four years since its creation, the Treatment Commission has pursued the goal of siting a comprehensive hazardous waste treatment facility. During that time there have been a number of changes in federal statutes and regulations related to hazardous waste. In addition, there have been advances in the technology of recycling, treatment, and disposal of hazardous waste, as well as changes in the economics of hazardous waste treatment. These changes gave rise over time to concerns that the course adopted in 1984 might not now be in the best interest of the State. As a result of these concerns and other factors, the 1988 General Assembly enacted 1987 Session Laws, Ch. 993 (House Bill 2365). Among other provisions, this

act prohibited the Treatment Commission from engaging in further siting activity without authorization by the General Assembly (except that the Treatment Commission could continue to seek a volunteer county willing to host the facility), and authorized the Governor to enter into interstate agreements to provide for the treatment and disposal of hazardous waste outside the State.

The 1988 General Assembly also created the present Hazardous Waste Management Study Commission (Part II, Sections 2.1 to 2.6 of the 1987 Session Laws (Regular Session, 1988)). The Commission was directed to study the full range of hazardous waste management issues.

PROCEEDINGS OF THE COMMISSION

The Hazardous Waste Management Study Commission has met a total of six times, beginning on September 2, 1988, and continuing on September 23, 1988, October 13, 1988, November 18, 1988, December 14, 1988, and January 5, 1989. The meeting on September 23, 1988 was videotaped by OPEN/NET and was later aired on cable TV. The Commission focused on the questions of how much hazardous waste North Carolina generates and what capacity the State has to manage the waste. The Commission was presented with data from the Solid Waste Management Section of the Department of Human Resources and from the Governor's Waste Management Board, reflecting waste generated in North Carolina which requires off-site treatment and/or disposal. In addition, the Commission heard from the Pollution Prevention Pays Program in the Department of Natural Resources and Community Development on waste reduction and waste minimization.

North Carolina exports approximately 45,000 tons of its hazardous waste to South Carolina. At its meeting on October 13, 1988, the Commission invited a representative from the Board of the South Carolina Department of Health and Environmental Control to discuss present and future availability of hazardous waste treatment and disposal capacity in South Carolina. In addition, the Commission heard from several North Carolina industries regarding their perspectives on hazardous waste treatment capacity.

At its meeting on November 18, 1988, the Commission concentrated on the availability of hazardous waste treatment and disposal outside North Carolina. Representatives of Region IV of the United States Environmental Protection Agency (EPA) were invited to discuss waste generation and the implementation of new federal regulations regarding capacity assurance requirements. At that meeting, the Commission raised the issue of developing a

regional approach to a comprehensive hazardous waste management program. The Deputy Regional Administrator of EPA responded favorably to this concept.

At its meeting on December 14, 1988, the Commission was presented with the data and analyses on which the Hazardous Waste Treatment Commission based its design of a comprehensive hazardous waste treatment facility. In addition, the Commission heard presentations relating to the economic feasibility of such a facility.

On January 5, 1989, the Commission met to discuss the findings and recommendations which follow.

FINDINGS AND RECOMMENDATIONS

- A. The Hazardous Waste Management Study Commission (Commission) recommends that the Commission be continued so that it may complete the study authorized by the 1988 General Assembly.
1. The Commission finds that although the findings and recommendations of the Hazardous Waste Study Commission of 1983 were correct, circumstances have since changed so as to warrant a thorough review of the State's hazardous waste management to insure that the underlying intent of the 1984 legislation is achieved.
 2. The Commission finds that there was insufficient time to complete the study mandated by the 1988 General Assembly.
- B. The Commission recommends that North Carolina actively participate in negotiations with the United States Environmental Protection Agency (EPA) and other states to develop a regional approach to hazardous waste management.
1. The Commission finds that every state may not need a comprehensive hazardous waste treatment facility in order to comply with the capacity assurance requirements established by the Federal Superfund Amendments and Reauthorization Act of 1986 (SARA).
 2. The Commission finds that the best way for North Carolina to meet the objectives of the 1984 legislation and the SARA capacity assurance requirements will be through a regional approach, which approach is currently being discussed with the assistance of the Southern Legislative Conference and Region IV of EPA.

3. The Commission finds that to proceed under the 1984 legislation to construct a comprehensive hazardous waste management facility would be inconsistent with this sound regional approach.
 4. The Commission finds that a regional approach probably cannot be implemented by the SARA capacity assurance deadline, and that the deadline should be extended as recommended by the Southern Legislative Conference.
 5. The Commission finds that, after regional cooperation has been established, North Carolina should be prepared to do its part to treat and handle hazardous waste in the southeast.
- C. The Commission recommends that the current limitations on the activities of the Hazardous Waste Treatment Commission should be continued for the time being.
1. The Commission finds that the search for a volunteer county to host a treatment facility should be continued, although the scope and size of the facility should be determined at a later date.
- D. The Commission recommends that the General Assembly allocate resources for waste reduction and waste minimization.
1. The Commission finds that efforts to work with industry to treat waste on site should continue and should be expanded.
 2. The Commission finds that additional resources are necessary to assist with new technology to prevent, reduce, and recycle hazardous waste.

Appendix A: Members and Staff of the Commission

MEMBERS

Lt. Governor's Appointments

Sen. Charles W. Hipps, Cochair
505 North Main Street, Suite 305
Waynesville, NC 28786
(704) 452-2866

Sen. George B. Daniel
Post Office Drawer O
Yanceyville, NC 27379
(919) 694-4363

Sen. Robert L. Martin
Post Office Box 367
Bethel, NC 27812
(919) 825-4361

Sen. Robert Warren
Route 3, Box 25
Benson, NC 27504
(919) 894-3944

Sen. Dennis Winner
81-B Central Avenue
Asheville, NC 28801
(704) 258-0094

Speaker's Appointments

Rep. Joe Hackney, Cochair
Box 1329
Chapel Hill, NC 27514
(919) 929-0323

Rep. Roy A. Cooper, III
Post Office Drawer 4538
Rocky Mount, NC 27803
(919) 442-3115

Rep. Daniel H. DeVane
Post Office Drawer N
Raeford, NC 28376
(919) 875-2528

Rep. Martin L. Nesbitt
Suite 700, 29 N. Market Street
Asheville, NC 28801
(704) 252-0490

Rep. Dennis A. Wicker
Post Office Box 309
Sanford, NC 27330
(919) 775-7119

STAFF

George F. Givens,
Commission Counsel
545 Legislative Office Bldg.
300 North Salisbury Street
Raleigh, NC 27611

Sherri L. Evans-Stanton,
Commission Counsel
545 Legislative Office Bldg.
300 North Salisbury Street
Raleigh, NC 27611

Lucille B. Thompson,
Commission Clerk
2208 Legislative Building
Jones Street
Raleigh, NC 27611

Appendix B: General Statute §§ 143B-470 to 470.6

Article 10.

Department of Commerce

PART 11A. North Carolina Hazardous Waste Treatment Commission.

§ 143B-470. Declaration of findings.

The General Assembly of North Carolina hereby finds and declares that the safe management of hazardous waste, and particularly the timely establishment of adequate facilities for the disposal and management of hazardous waste, is one of the most urgent problems facing North Carolina. The safe management and disposal of hazardous wastes are essential to continued economic growth and for protection of the public health and safety and the environment. Consequently, cooperation and coordination among the private sector, the general public and State and local agencies to assure the prevention of unnecessary waste and the establishment of a comprehensive and integrated system of adequate treatment and disposal facilities are essential.

The General Assembly of North Carolina finds and declares that prevention, recycling, detoxification and reduction of hazardous wastes should be encouraged and promoted. These are alternatives which ultimately remove such wastes' hazards to human health and the environment. When these alternatives are not technologically or economically feasible, long-term retrievable storage is preferable to other means of disposal until appropriate methods for recycling or detoxification of the stored wastes are found. Hazardous waste shall be treated prior to disposal or long-term storage in North Carolina. Long-term storage or disposal shall be used for the storage or disposal of the residual or ashes of hazardous waste which has been treated so that the toxicity is low enough to present no significant health or safety hazard in the event of leakage from the facility. Hazardous waste that cannot be reduced, stabilized or destroyed to the extent which renders it sufficiently low in toxicity as to present no significant health or safety hazard shall be stored in long-term retrievable storage until such methods are found. Hazardous waste in long-term retrievable storage shall be detoxified as soon as the Commission for Health Services determines, based upon a preponderance of the evidence, that the technology is available at a reasonable cost. Hazardous waste landfill facilities and polychlorinated biphenyl landfill facilities shall be detoxified as soon as economically feasible technology is available and sufficient money is available without additional appropriation. The General Assembly further finds that hazardous wastes shall be treated and disposed of in the most cost-effective manner while protecting public health and safety and the environment. (1983 (Reg. Sess., 1984), c. 973, s. 1.)

§ 143B-470.1. Declaration of purposes; annexation prohibited.

(a) It is the purpose of this Part to provide for the siting, construction and operation of comprehensive hazardous waste management facilities to the end that hazardous waste may be treated or disposed of in the most cost-effective manner, while protecting public health and safety and the environment. It is also the purpose of the General Assembly to create a Commission to site, finance, build, lease or operate, or oversee a hazardous waste treatment facility if private enterprise fails to do so within a specified time. It is also the purpose of the General Assembly through powers granted to the Governor's Waste Management Board to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of hazardous waste by means of special local or private acts or resolutions, ordinances, property restrictions, zoning laws, rules and regulations, fire laws, rules and regulations, civil defense laws, rules and regulations, public health laws, rules and regulations, building codes, and otherwise.

(b) From the time a site is selected for a hazardous waste treatment facility pursuant to G.S. 143B-470.4(b) or from the time a county, by resolution of the board of commissioners, proposes a specific site or area for such a hazardous waste treatment facility, notwithstanding the provisions of Article 4A of Chapter 160A, no city may annex the site or area except upon a valid petition signed by the owner of the treatment facility's real property. If a previously selected site or area is abandoned, then it shall again be subject to annexation in accordance with Article 4A of Chapter 160A. (1983 (Reg. Sess., 1984), c. 973, s. 1; 1987 (Reg. Sess., 1988), c. 993, s. 29.)

§ 143B-470.1A. Gross receipts tax.

The Treatment Commission shall collect and deposit with State Treasurer, on behalf of local governments where a hazardous waste treatment facility is located pursuant to this Part, a gross receipts tax in the amount of two and one-half percent (2.5%) of the gross receipts of the treatment facility per annum, to be distributed to local governments as the General Assembly shall provide. The Treatment Commission shall develop and recommend to the General Assembly a proposed revenue package and revenue distribution formula which the General Assembly shall consider in providing for distribution of this tax and such other revenues as may be recommended. (1987 (Reg. Sess., 1988), c. 993, s. 30.)

§ 143B-470.2. Definitions.

Unless the context otherwise requires, the following definitions shall apply to this Part:

(1) "CERCLA/SARA" means Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. §9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended.

(1a) "Federal act" means the Resource Conservation and Recovery Act of 1976, P.L. 94-580, as amended; codified in Chapter 82 of Title 42 of the United States Code, as amended.

(2) "Hazardous waste" means a solid waste, or combination of solid wastes, as solid waste is defined in G.S. 130A-290(18), which because of its quantity, concentration or physical, chemical or infectious characteristics may:

a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

(3) "Hazardous waste treatment facility" means a facility which is established, constructed, financed, sited and operated in accordance with this Part for the recovery, recycling, treatment, storage during collection and prior to treatment, short term storage after treatment, collection, processing, volume reduction, source separation, or transportation used exclusively in connection with the facility, of hazardous waste; and which facility includes several of the following equipments and processes: incinerators, rotary kilns, drum handling, washing and crushing facilities, raw waste tank storage, reduction, neutralization, detoxification, wastewater treatment facilities including settling systems, aerobic digesters, anaerobic digesters, clarifiers, neutralization facilities, solidifying facilities, evaporators, reactions to facilitate "reuse" or recycling, analytical capabilities, and other similar appropriate technologies, activities and processes as may now exist or be developed in the future.

(4) "Hazardous waste generation" means the act or process of producing hazardous waste.

(5) "Hazardous waste long-term storage facility" means any facility or any portion of a facility constructed pursuant to the rules adopted under this Part for storage of the residuals of the treatment of hazardous waste, on or in land.

(6) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.

(7) "Long-term retrievable storage" means storage in closed containers in facilities (either above or below ground) with (i) adequate lights, (ii) impervious cement floors, (iii) strong visible shelves or platforms, (iv) passageways to allow inspection at any time, (v) adequate ventilation if underground or in closed buildings, (vi) protection from the weather, (vii) accessible to monitoring with signs on both individual containers and sections of storage facilities, and (viii) adequate safety and security precautions for facility personnel, inspectors and invited or permitted members of the community.

(8) "Manifest" means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(9) "Notice" shall include any written notice made in accordance with the provisions of G.S. 1A-1, Rule 4 of the North Carolina Rules of Civil Procedure, or any notice provision under this Article or the federal act.

(10) "Operated" includes any phase of the planning, application, siting, financing, construction, operating and maintaining of the hazardous waste treatment facility.

(11) "Person" means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency, or other legal entity.

(12) "Recycling" means the process by which recovered resources are transformed into new products so that the original products lose their identity.

(13) "Reuse" means a process by which resources are reused or rendered usable.

(14) "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of hazardous waste(s) containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons.

(15) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character, form or composition of any solid waste so as to neutralize the waste or to render the waste nonhazardous or less hazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. The term includes any activity or processing designed to change the physical form or chemical composition of solid waste to render it nonhazardous.

(16) "Treatment Commission" means the North Carolina Hazardous Waste Treatment Commission created by this Part.

(17) "Unit of local government" means a county, city, town or incorporated village. (1983 (Reg. Sess., 1984), c. 973, s. 1; 1987 (Reg. Sess., 1988), c. 993, s. 31.)

§143B-470.3. Creation of Commission.

Membership, appointment, terms and vacancies, officers, meetings and quorum, compensation.

The North Carolina Hazardous Waste Treatment Commission is created. It shall be governed by a board composed of nine members herein referred to as the Treatment Commission. Members of the General Assembly shall be ineligible for appointment to membership on the Treatment Commission. The Governor shall appoint three members of the Treatment Commission, and the General Assembly shall appoint six members of the Treatment Commission.

The initial appointments by the Governor shall be made on or after January 31, 1985, one term to expire January 31, 1989, and two terms to expire January 31, 1987. Thereafter, at the expiration of each stipulated term of office all appointments made by the Governor shall be for a term of four years. The members of the Treatment Commission appointed by the Governor shall be selected from the State at large and insofar as practicable shall represent each geographic section of the State and the industrial and environmental interests of the State. Any vacancy occurring in the membership of the Treatment Commission

appointed by the Governor shall be filled by the Governor for the unexpired term. The Governor shall have the authority to remove any member appointed by the Governor.

The General Assembly shall appoint three persons to serve terms expiring January 31, 1987. The General Assembly shall appoint three persons to serve terms expiring January 31, 1989. Successors shall serve for four-year terms. Of the three persons whose terms are to expire in 1987, two shall be appointed upon the recommendation of the President of the Senate and one shall be appointed upon the recommendation of the Speaker. Of the three persons whose terms are to expire in 1989, two shall be appointed upon the recommendation of the Speaker and one shall be appointed upon the recommendation of the President of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. The members of the Treatment Commission appointed by the General Assembly shall be selected from the State at large and insofar as practicable shall represent each geographic section of the State and the industrial and environmental interests of the State. The General Assembly shall have the authority to remove any member appointed by the General Assembly. No member shall serve more than two consecutive four-year terms.

The Governor shall appoint from the members of the Treatment Commission the Chairman and Vice-Chairman of the Treatment Commission. The Secretary of Commerce or his designee shall serve as secretary of the Treatment Commission. The members of the Treatment Commission shall appoint a treasurer of the Treatment Commission. The Department of Commerce shall use funds already appropriated to the Department to implement this Part.

Should any one of the appointing authorities fail to make appointments by March 1, 1985, or in the event that the Chairman and Vice-Chairman of the Commission are not appointed by that date, the Treatment Commission shall proceed to elect officers and begin operation.

The Treatment Commission shall meet once in each 60 days at such regular meeting time as the Treatment Commission by rule may provide and at any place within the State as the Treatment Commission may provide, and shall also meet upon the call of its chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. The members of the Treatment Commission shall be compensated for their services at the rate of one hundred fifty dollars (\$150.00) per day and shall receive travel expenses in accordance with G.S. 138-5; the members may not receive a subsistence allowance. (1983 (Reg. Sess., 1984), c. 973, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 165.)

§ 143B-470.4. Powers and duties of the Treatment Commission.

(a) To carry out the purposes of this Part, the Treatment Commission:

(1) May exercise the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;

(2) May make all necessary contracts and arrangements with other authorities of this and other states for any other purposes of the Treatment Commission;

(3) May rent, lease, buy, own, acquire, mortgage, or otherwise encumber, and dispose of real or personal property;

(4) Shall establish an office for the transaction of its business at such place or places as, in the opinion of the Treatment Commission, shall be advisable or necessary in carrying out the purposes of this Part;

(5) May create and operate any divisions it deems necessary or useful;

(6) May pay all costs of the formation and organization of the Treatment Commission, and incident to its administration and operation, and may pay all other costs necessary in carrying out and accomplishing the purposes of this Part;

(7) May apply for, accept and expend loans and grants of money from any federal agency or the State or any political subdivision thereof or from any public or private sources available for any of the purposes authorized in this Part, and to give any evidences of indebtedness as may be required. No indebtedness of any kind incurred or created by the Treatment Commission shall constitute an indebtedness of the State or any of its political subdivisions, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State or any of its political subdivision. At no time may the total outstanding indebtedness of the Treatment Commission, excluding bond indebtedness, exceed a total of five hundred thousand dollars (\$500,000) without approval of the Governor, after receiving the advice of the Advisory Budget Commission;

(8) May appoint an Executive Director, who shall report to the Treatment Commission and serve at the pleasure of the Treatment Commission. The Executive Director with the approval of the Treatment Commission shall appoint such management personnel as he deems necessary to serve at his pleasure. They shall report to the Executive Director. The salaries of these personnel shall be fixed by the Governor with the approval of the Advisory Budget Commission. The Executive Director or his designee shall appoint, employ, dismiss and, within the limits of available funding, fix the compensation of such other employees as he deems necessary to carry out the purposes of this Part. There shall be an executive committee consisting of the chairman of the Treatment Commission and two other members elected annually by the Treatment Commission. The executive committee shall be vested with the authority to do all acts which are authorized by the bylaws of the Treatment Commission. Members of the executive committee shall serve until their successors are elected;

(9) May act as agent for the United States of America, or any of its agencies, departments, corporations, or instrumentalities, in any matter coming within the purposes or powers of the Treatment Commission;

(10) May, pursuant to Article 2 of Chapter 150B of the General Statutes, adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed,

and may provide for the appointment of any committees, and the functions thereof;

(11) May do anything necessary to accomplish the purposes of this Part.

The property of the Treatment Commission shall not be subject to any taxes or assessments.

(b) If no permit to operate a hazardous waste treatment facility has been issued to a private operator by January 1, 1986, the Treatment Commission shall actively seek communities interested in hosting hazardous waste treatment facilities and private operators of hazardous waste treatment facilities and shall present appropriate sites, as prescribed in G.S. 130A-294(g), to those operators. If no permit to operate a hazardous waste treatment facility is pending which is likely to be granted to a private operator by October 1, 1987, the Treatment Commission shall, on the basis of the criteria and procedures outlined in G.S. 130A-294(g), select appropriate site(s) and begin proceedings to purchase or if necessary condemn property for such site(s) under the State's power of eminent domain. Condemnation shall be upon the same terms and procedures as set forth in Article 9 of Chapter 136 of the General Statutes of North Carolina, except that the Treatment Commission shall have the same rights, duties, and responsibilities as set forth for the North Carolina Department of Transportation. The purposes for which the power of eminent domain is used in this section are to enable a hazardous waste treatment facility to be built which will manage hazardous waste generated by the public or by private industry in making goods for the benefit of the public, and are, therefore, public purposes for these and related purposes. The Treatment Commission shall then actively seek private operators of hazardous waste treatment facilities and shall contract with at least one operator to purchase the site and construct a hazardous waste treatment facility. If no permit to operate a hazardous waste treatment facility has been issued by April 1, 1988, the Treatment Commission shall submit to the General Assembly plans for construction of a facility on one of the sites and shall proceed to begin construction of a facility within one year and shall seek a private operator to operate the facility. If no private operator can be found, the Treatment Commission shall operate the facility.

(b1) Notwithstanding the provisions of subsection (b) of this section, until further authorization by the General Assembly, the Treatment Commission shall not site a hazardous waste treatment facility in any county in the State, nor enter into any activity leading to the siting of a facility, including negotiation for, optioning of, purchase of, or condemnation of any land, the preparation or filing of an environmental impact statement, or any other activity that might be precedent to the selection of a site for a hazardous waste treatment facility, except that the Treatment Commission may continue to seek a volunteer county willing to host the facility.

(b2) The Treatment Commission shall study the necessity and scope of the facility authorized by this section. The Treatment Commission shall lend assistance to and work in cooperation with

any study committee or commission authorized by the General Assembly to study the subject of hazardous waste.

(c) The Treatment Commission shall submit to the General Assembly by January 1, 1986, a comprehensive plan for the treatment of hazardous waste in North Carolina, including a plan to provide for a statewide hazardous waste collection system. The Governor's Waste Management Board, the Solid and Hazardous Waste Branch of the Division of Health Services of the Department of Human Resources, and other State agencies and departments shall cooperate with the Treatment Commission in preparation of the plan. If the Treatment Commission, in its report to the General Assembly, indicates that the needs of the State for treatment of hazardous waste are being met, the Treatment Commission shall cease to exist as of January 1, 1986. If not, the Treatment Commission shall report periodically to the General Assembly or, if the General Assembly is not in session, to the Joint Legislative Commission on Governmental Operations, on progress toward meeting the State's needs. (1983 (Reg. Sess., 1984), c. 973, s. 1; 1985, c. 711; 1985 (Reg. Sess., 1986), c. 1014, s. 166; 1987, c. 82, ss. 1, 2, c. 827, s. 1; 1987 (Reg. Sess., 1988), c. 993, s. 32.)

§143B-470.5. Issuance of bonds and notes.

(a) As a means of raising the funds needed from time to time for the acquisition, construction, equipment, maintenance or operation of any facility, building, structure or any other matter or thing which the Treatment Commission is authorized to acquire, construct, equip, maintain, or operate, all or any of them, including authorized special user projects, the Treatment Commission may borrow money and in evidence thereof may issue bonds, notes and other obligations of the Treatment Commission as provided in the Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes. Bonds, notes and other obligations may also be issued to (i) establish any reserves the Treatment Commission may determine to be desirable including, without limitation, a debt service reserve fund, and (ii) provide for interest during the estimated period of construction and for a reasonable period thereafter and (iii) provide for working capital.

(b) Any obligations issued by the Treatment Commission under the provisions of this Part, their transfer and the income therefrom (including any profit made on the sale of them), shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, except inheritance or gift taxes. (1983 (Reg. Sess., 1984), c. 973, s. 1.)

§ 143B-470.6. Governor to contract for treatment and disposal.

(a) Notwithstanding the provisions of G.S. 143B-470.4, the Governor is authorized to enter into interstate agreements to provide for the treatment and disposal of the State's hazardous waste outside the State as permitted by CERCLA/SARA, and he shall make every reasonable effort to do so beginning as soon as possible after the effective date of this section. The Treatment

Commission shall assist the Governor in this effort as directed by him.

(b) In the event the Governor is unable to enter into interstate agreements to provide for the treatment and disposal of the State's hazardous waste outside the State, he shall certify to the Treatment Commission that adequate capacity cannot be guaranteed through out-of-state contractual agreements and provide to it a report of his efforts to do so. Copies of the report shall also be sent to the Joint Legislative Commission on Governmental Operations and the General Research Division of the Legislative Services Commission. (1987 (Reg. Sess., 1988), c. 993, s. 33.)

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION
RATIFIED BILL

CHAPTER 993
HOUSE BILL 2365

AN ACT TO PROVIDE FEE SETTING AUTHORITY AND TO IMPOSE TAXES AND FEES APPLICABLE TO LOW-LEVEL RADIOACTIVE WASTE AND HAZARDOUS WASTE, TO IMPLEMENT THE RECOMMENDATIONS OF THE JOINT SELECT COMMITTEE ON LOW-LEVEL RADIOACTIVE WASTE AND THE INTER-AGENCY COMMITTEE ON LOW-LEVEL RADIOACTIVE WASTE, TO MAKE RELATED CLARIFYING AND TECHNICAL AMENDMENTS, TO AUTHORIZE CERTAIN AGREEMENTS RELATING TO HAZARDOUS WASTE, TO RESTRICT THE ACTIVITIES OF THE HAZARDOUS WASTE TREATMENT COMMISSION, TO LIMIT ANNEXATION OF WASTE FACILITIES, AND TO MAKE CONFORMING CHANGES TO OTHER LAWS.

The General Assembly of North Carolina enacts:

Sec. 29. G.S. 143B-470.1 reads as rewritten:

"§ 143B-470.1. **Declaration of purposes; annexation prohibited**--(a) It is the purpose of this Part to provide for the siting, construction and operation of comprehensive hazardous waste management facilities to the end that hazardous waste may be treated or disposed of in the most cost-effective manner, while protecting public health and safety and the environment. It is also the purpose of the General Assembly to create a Commission to site, finance, build, lease or operate, or oversee a hazardous waste treatment facility if private enterprise fails to do so within a specified time. It is also the purpose of the General Assembly through powers granted to the Governor's Waste Management Board to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of hazardous waste by means of special local or private acts or resolutions, ordinances, property restrictions, zoning laws, rules and regulations, fire laws, rules and regulations, civil defense laws, rules and regulations, public health laws, rules and regulations, building codes, and otherwise.

(b) From the time a site is selected for a hazardous waste treatment facility pursuant to G.S. 143B-470.4(b) or from the time a county, by resolution of the board of commissioners, proposes a specific site or area for such a hazardous waste treatment facility, notwithstanding the provisions of Article 4A of Chapter 160A, no city may annex the site or area except upon a valid petition signed by the owner of the treatment facility's real property. If a previously selected site or area is abandoned, then it shall again be subject to annexation in accordance with Article 4A of Chapter 160A."

Sec. 30. Part 11A of Article 10 of Chapter 143B is amended by adding the following new section:

"§ 143B-470.1A. Gross receipts tax.--The Treatment Commission shall collect and deposit with State Treasurer, on behalf of local governments where a hazardous waste treatment facility is located pursuant to this Part, a gross receipts tax in the amount of two and one-half percent (2.5%) of the gross receipts of the treatment facility per annum, to be distributed to local governments as the General Assembly shall provide. The Treatment Commission shall develop and recommend to the General Assembly a proposed revenue package and revenue distribution formula which the General Assembly shall consider in providing for distribution of this tax and such other revenues as may be recommended."

Sec. 31. G.S. 143B-470.2 is amended by renumbering the present subdivision (1) as subdivision (1a) and adding a new subdivision (1) as follows:

"(1) 'CERCLA/SARA' means Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 **et seq.**, as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended."

Sec. 32. G.S. 143B-470.4 is amended by adding two new subsections immediately after subsection (b) as follows:

"(b1) Notwithstanding the provisions of subsection (b) of this section, until further authorization by the General Assembly, the Treatment Commission shall not site a hazardous waste treatment facility in any county in the State, nor enter into any activity leading to the siting of a facility, including negotiation for, optioning of, purchase of, or condemnation of any land, the preparation or filing of an environmental impact statement, or any other activity that might be precedent to the selection of a site for a hazardous waste treatment facility, except that the Treatment Commission may continue to seek a volunteer county willing to host the facility.

(b2) The Treatment Commission shall study the necessity and scope of the facility authorized by this section. The Treatment Commission shall lend assistance to and work in cooperation with any study committee or commission authorized by the General Assembly to study the subject of hazardous waste."

Sec. 33. Part 11A of Article 10 of Chapter 143B is amended by adding a new section as follows:

"§ 143B-470.6. Governor to contract for treatment and disposal.--(a) Notwithstanding the provisions of G.S. 143B-470.4, the Governor is authorized to enter into interstate agreements to provide for the treatment and disposal of the State's hazardous waste outside the State as permitted by CERCLA/SARA, and he shall make every reasonable effort to do so beginning as soon as possible after the effective date of this section. The Treatment Commission shall assist the Governor in this effort as directed by him.

(b) In the event the Governor is unable to enter into interstate agreements to provide for the treatment and disposal of the State's hazardous waste outside the State, he shall certify to the Treatment Commission that adequate capacity cannot be guaranteed through out-of-state contractual agreements and provide to it a report of his efforts to do so. Copies of the report shall also be sent to the Joint Legislative Commission on Governmental Operations and the General Research Division of the Legislative Services Commission."

Sec. 34. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1988.

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION
RATIFIED BILL

CHAPTER 1100
SENATE BILL 257

AN ACT TO CREATE AND CONTINUE VARIOUS COMMITTEES AND
COMMISSIONS AND TO MAKE CHANGES IN THE BUDGET OPERATIONS
OF THE STATE.

The General Assembly of North Carolina enacts:

SUBCHAPTER A
STUDY COMMISSIONS AND COMMITTEES

PART II-----HAZARDOUS WASTE MANAGEMENT STUDY COMMISSION
(H.B. 93 - Hackney)

Sec. 2.1. The Hazardous Waste Management Study Commission is created. The Commission shall consist of 10 members: five Senators appointed by the President of the Senate, and five Representatives appointed by the Speaker of the House.

Sec. 2.2. The President of the Senate shall designate one Senator as cochairman and the Speaker of the House shall designate one Representative as cochairman.

Sec. 2.3. The Commission shall:

- (a) Study the current and projected need for hazardous waste treatment and disposal capacity in the State in light of anticipated generation of hazardous waste and alternatives for hazardous waste treatment and disposal;
- (b) Study the necessity for and scope of a State-owned or operated hazardous waste treatment facility;
- (c) Evaluate the potential for the development of additional hazardous waste treatment and disposal capacity by the private sector;
- (d) Review progress in securing a volunteer county to host the State's hazardous waste treatment facility;
- (e) Study incentives and compensation for the community which hosts, either voluntarily or involuntarily, the State's hazardous waste treatment facility, including any additional incentives and compensation which may be needed, whether there should be differential compensation for a volunteer county, options for use of funds by local governments, distribution of compensation among local governments, and methods of providing flexibility in the development of an incentives and compensation package for a particular local community;
- (f) Review progress in developing interstate agreements for the treatment and disposal of hazardous waste outside the State;
- (g) Examine site selection guidelines established by the Hazardous Waste Treatment Commission and determine whether any modification is needed in site selection criteria and procedures:

- (h) Analyze existing State law governing the Hazardous Waste Treatment Commission and determine whether any changes are needed;
- (i) Study the capacity assurance requirement under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 **et seq.**, as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended as it relates to the continued eligibility of North Carolina for remedial actions under Superfund; and
- (j) Make such findings and recommendations with respect to any of the foregoing topics as it deems necessary and appropriate.

Sec. 2.4. The Commission shall submit a final report of its findings and recommendations to the General Assembly on or before the first day of the 1989 Session of the General Assembly by filing the report with the President of the Senate and the Speaker of the House of Representatives. Upon filing its final report, the Commission shall terminate.

Sec. 2.5. The Hazardous Waste Management Study Commission shall proceed expeditiously with the study authorized by this Part, to the end that the 1989 General Assembly may consider and act on the recommendations of the Study Commission as early as possible in the 1989 Session in order that the siting activities of the Hazardous Waste Treatment Commission, if any, may resume at the earliest possible time.

Sec. 2.6. From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the work of the Commission created by this Part.

-----EFFECTIVE DATE

Sec. 49. Except as otherwise provided, this act shall become effective July 1, 1988.

In the General Assembly read three times and ratified this the 12th day of July, 1988.

Appendix E: Proposed Legislation

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S/H

D

DRAFT HWMSC-RD/RT-001
5-JAN-89/12:42:09

ATTENTION: Line numbers may change after introduction.

Short Title: Haz. Waste Mgmt. Study Continued

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CONTINUE THE HAZARDOUS WASTE MANAGEMENT STUDY
3 COMMISSION.
4 The General Assembly of North Carolina enacts:
5 Section 1. Chapter 120 of the General Statutes is
6 amended by adding a new Article to read:
7 "Article 12F.
8 "Hazardous Waste Management Study Commission.
9 "§ 120-70.61. Commission established.--The Hazardous Waste
10 Management Study Commission is hereby established as a permanent
11 commission of the General Assembly.
12 "§ 120-70.62. Membership; cochairmen; vacancies; quorum.--The
13 Hazardous Waste Management Study Commission shall consist of five
14 Senators appointed by the President Pro Tempore of the Senate and
15 five Representatives appointed by the Speaker of the House of

1 Representatives who shall serve at the pleasure of their
2 appointing officer. The President Pro Tempore of the Senate
3 shall designate one Senator to serve as cochairman and the
4 Speaker of the House of Representatives shall designate one
5 Representative to serve as cochairman. Any vacancy which occurs
6 on the Hazardous Waste Management Study Commission shall be
7 filled in the same manner as the original appointment. A quorum
8 of the Hazardous Waste Management Study Commission shall consist
9 of six members.

10 "§ 120-70.63. Powers and duties.--The Hazardous Waste
11 Management Study Commission shall have the following powers and
12 duties:

- 13 (1) To study the current and projected need for
14 hazardous waste treatment and disposal capacity in
15 the State in light of anticipated generation of
16 hazardous waste and alternatives for hazardous
17 waste treatment and disposal;
- 18 (2) To study the necessity for and scope of a State-
19 owned or operated hazardous waste treatment
20 facility;
- 21 (3) To evaluate the potential for the development of
22 additional hazardous waste treatment and disposal
23 capacity by the private sector;
- 24 (4) To review progress in securing a volunteer county
25 to host the State's hazardous waste treatment
26 facility;
- 27 (5) To study incentives and compensation for the
28 community which hosts, either voluntarily or
29 involuntarily, the State's hazardous waste
30 treatment facility, including any additional
31 incentives and compensation which may be needed,
32 whether there should be differential compensation
33 for a volunteer county, options for use of funds by
34 local governments, distribution of compensation
35 among local governments, and methods of providing

- 1 flexibility in the development of an incentives and
2 compensation package for a particular local
3 community;
- 4 (6) To review progress in developing interstate
5 agreements for the treatment and disposal of
6 hazardous waste outside the State;
- 7 (7) To evaluate and participate in a cooperative,
8 comprehensive regional approach to hazardous waste
9 treatment and disposal;
- 10 (8) To examine site selection guidelines established by
11 the Hazardous Waste Treatment Commission and
12 determine whether any modification is needed in
13 site selection criteria and procedures;
- 14 (9) To analyze existing State law governing the
15 Hazardous Waste Treatment Commission and determine
16 whether any changes are needed;
- 17 (10) To study the capacity assurance requirement under
18 the Comprehensive Environmental Response,
19 Compensation and Liability Act of 1980, Pub. L. No.
20 96-510, 94 Stat. 2767, 42 U.S.C. 9601 et seq., as
21 amended, and the Superfund Amendments and
22 Reauthorization Act of 1986, Pub. L. No. 99-499,
23 100 Stat. 1613, as amended as it relates to the
24 continued eligibility of North Carolina for
25 remedial actions under Superfund;
- 26 (11) To refer any matter within the scope of these
27 powers and duties to the Environmental Review
28 Commission; and
- 29 (12) To undertake such additional studies as may from
30 time to time be requested by the Legislative
31 Research Commission, the Joint Legislative
32 Commission on Governmental Operations, or the
33 Environmental Review Commission, and to make such
34 reports and recommendations to the General Assembly
35 regarding such studies as it deems appropriate.

1 "§ 120-70.64. Additional powers.--The Hazardous Waste
2 Management Study Commission, while in the discharge of official
3 duties, may exercise all the powers provided for under the
4 provisions of G.S. 120-19, and G.S. 120-19.1 through G.S.
5 120-19.4. The Hazardous Waste Management Study Commission may
6 meet at any time upon the call of either cochairman, whether or
7 not the General Assembly is in session, except that the Hazardous
8 Waste Management Study Commission shall not meet during any
9 session of either house of the General Assembly, and shall
10 adjourn no later than 15 minutes preceding a regular session of
11 either house of the General Assembly. The Hazardous Waste
12 Management Study Commission may meet in the Legislative Building
13 or the Legislative Office Building upon the approval of the
14 Legislative Services Commission.

15 "§ 120-70.65. Compensation and expenses of members.--Members of
16 the Hazardous Waste Management Study Commission shall receive
17 subsistence and travel expenses at the rates set forth in G.S.
18 120-3.1.

19 "§ 120-70.66. Staffing.--The Legislative Administrative Officer
20 shall assign as staff to the Hazardous Waste Management Study
21 Commission professional employees of the General Assembly, as
22 approved by the Legislative Services Commission. Clerical staff
23 shall be assigned to the Hazardous Waste Management Study
24 Commission through the offices of the Supervisor of Clerks of the
25 Senate and Supervisor of Clerks of the House of Representatives.
26 The expenses of employment of clerical staff shall be borne by
27 the Hazardous Waste Management Study Commission.

28 "§ 120-70.67. Funding.--From funds available to the General
29 Assembly, the Legislative Services Commission shall allocate
30 monies to fund the Hazardous Waste Management Study Commission
31 created by this Part."

32 Sec. 2. G. S. 120-70.43(7) reads as rewritten:

33 "(7) To undertake such additional studies as it
34 deems appropriate or as may from time to time
35 be requested by the President of the Senate,

1 the President Pro Tempore of the Senate, the
2 Speaker of the House of Representatives,
3 either house of the General Assembly, the
4 Legislative Research Commission, the Joint
5 Legislative Commission on Governmental
6 Operations, the Joint Legislative Utility
7 Review Committee, ~~or~~ the Joint Select
8 Committee on Low-Level Radioactive Waste, or
9 the Hazardous Waste Management Study
10 Commission, and to make such reports and
11 recommendations to the General Assembly
12 regarding such studies as it deems
13 appropriate; provided that the Environmental
14 Review Commission shall not undertake any
15 study which the General Assembly has assigned
16 to another legislative commission or
17 committee."

18 Sec. 3. The Hazardous Waste Management Study Commission
19 established by section one of this act shall be a continuation of
20 the Hazardous Waste Management Study Commission authorized by
21 Part II, Sections 2.1 to 2.6, of Chapter 1100 of the 1987 Session
22 Laws (1988 Regular Session). The initial membership and
23 cochairmen of the Hazardous Waste Management Study Commission
24 shall be those persons serving as members and cochairmen of the
25 previous Hazardous Waste Management Study Commission. Any vacancy
26 which may exist in the initial membership and cochairmen shall be
27 filled by appointment as provided by the first two sentences of
28 G. S. 120-70.62. Any unexpended funds available for the previous
29 Hazardous Waste Management Study Commission are hereby
30 transferred to the Hazardous Waste Management Study Commission
31 established by this act.

32 Sec. 4. This act is effective upon ratification.

